

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
James Edward Dy

Case Number: 20-01426

vs.

Respondent  
NYLife Securities LLC

Hearing Site: Jersey City, New Jersey

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Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant James Edward Dy: Doctor Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent NYLife Securities LLC: Richard F. Lubarsky, Esq., Lubarsky Law Firm PLLC, White Plains, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: May 5, 2020.

James Edward Dy signed the Submission Agreement: May 5, 2020.

Statement of Answer filed by Respondent on or about: July 24, 2020.

NYLife Securities LLC signed the Submission Agreement: July 23, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent took no position on Claimant’s expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 643301; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief

that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that Claimant's request for compensatory damages in the amount of \$1.00 be denied; and that all costs and fees associated with the claim be assessed solely to Claimant.

At the close of the hearing, Claimant withdrew the request for \$1.00 in damages.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On October 13, 2020, Claimant advised that a public records search of the customer in Occurrence Number 643301 revealed that the customer passed away on May 29, 2004. Therefore, the customer could not be served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on January 6, 2021 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

The Arbitrator reviewed Claimant's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Arbitrator noted that the dispute related to Occurrence Number 643301 was not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; Claimant's BrokerCheck® Report; and Claimant's testimony.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to Occurrence Number 643301 from registration records maintained by the CRD for Claimant James Edward Dy (CRD Number 2877282) with the understanding that, pursuant to Notice to Members 04-16, Claimant James Edward Dy must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code of Arbitration Procedure (“Code”), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

In or around 1999, Claimant was a junior advisor. A senior advisor recommended to the customer as part of the customer’s retirement planning, a New York Life Flexible Premium Deferred Variable Annuity. The senior advisor explained all the details of the annuity, including cost, fees and risks. The customer was also provided with written descriptive materials for the annuity, which was purchased by signing all requisite disclosures and forms including a purchase application. Claimant was named as joint agent on the customer’s account so he could assist with managing the relationship. In October 1999, the customer complained that the annuity was purchased without the customer’s authority and contrary to the customer’s instructions. The firm investigated and denied the complaint. The customer took no further action. Both the testimony and documentary evidence establish that the complaint is both clearly erroneous and false and warrants expungement. Additionally, Claimant was not involved in any sales practice violation under (B) of the Rule as an added ground for expungement.

2. Any and all claims for relief not specifically addressed herein are denied.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

FINRA Dispute Resolution Services assessed a filing fee\* for each claim:

Initial Claim Filing Fee = \$ 50.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent NY Life Securities LLC is assessed the following:

Member Surcharge = \$ 150.00

**Hearing Session Fees and Assessments**

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single Arbitrator @ \$50.00/session = \$ 50.00  
Pre-hearing Conference: August 26, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: January 6, 2021 1 session		
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Total Hearing Session Fees	= \$	100.00

The Arbitrator has assessed the total hearing session fees to Claimant.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

**ARBITRATOR**

Robert E. Anderson

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

**Arbitrator's Signature**

***Robert E. Anderson***

Robert E. Anderson  
Sole Public Arbitrator

**01/12/2021**

Signature Date

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January 13, 2021

Date of Service (For FINRA Dispute Resolution Services use only)